



## St Paul District Regulatory Branch

**Update on Compensatory Mitigation Objectives** 

November 18, 2005

Regulatory Web Page: http://www.mvp.usace.army.mil/regulatory/





## **Compensatory Mitigation**

The fundamental objective of compensatory mitigation for Clean Water Act purposes is to achieve, at a minimum, 1.0:1.0 <u>FUNCTIONAL</u> replacement (no net loss) of wetland functions with an adequate margin of safety to reflect anticipated success.





## Current Issues in Mitigation

- ➤ Moving away from acreage surrogate to functional replacement
- Encouraging creation of saturated soil wetland types
- ➤ Proposed mitigation banks must be reviewed in the District prior to Corps approval
- Mitigation may be required to offset impacts to isolated waters or upland natural resources.





# Compensatory Mitigation Objectives

- ☐ To achieve the highest degree of success for compensatory mitigation, District efforts will focus on:
  - Enforceable permit conditions,
  - ☐ Specific performance standards,
  - ☐ Adequate monitoring,
  - Adaptive management, and
  - Sufficient legal protection





## Corps Emphasis Areas

- In-kind Replacement:
  - Replacement of saturated soil wetland types (wet meadows, sedge meadows, shrub-carr, forested wetlands).
  - Compensation site design should focus on these wetland types
  - Shrub and forested wetlands can be established at compensation sites
    - Requires an adjustment of time frame & expectations.





## Corps Emphasis Areas

- Emphasis on Target Vegetation and Target Hydrology:
  - > Specific seed mixtures for both wetland and upland (buffer) plantings matched to specific hydrology performance standards.
  - >"Meets 1987 Manual minimum hydrology criterion" is no longer accepted as a hydrology performance standard.
  - > St. Paul District has developed hydrology performance standards for each wetland type.





### Background

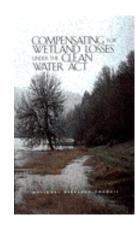
### What is Driving these Emphasis Areas?

National Academy of Sciences Report, 2001

http://www.nap.edu/books/0309074320/html/

GAO Report, May 2001

http://www.epa.gov/owow/wetlands/pdf/GAO.pdf



➤ provided a critical evaluation of the effectiveness of wetlands compensatory mitigation for authorized losses of wetlands and other waters under Section 404 of the Clean Water Act.





These studies/analyses identified compensatory mitigation shortfalls and identified a variety of technical, programmatic and policy recommendations:

- Temporal mitigation occurs before or concurrent with impact; sites monitored for longer periods of time.
- Functions and Values goals of mitigation based on an assessment to replace lost functions and values/wetland communities;monitoring based on performance standards.
- Spatial mitigation based on larger landscape view; watershed approach; ecotype/zone.





## A review of wetland compensation sites in the St. Paul District found the *following problems*:

- failure to establish the required acreage specified in the permit;
- risk of failure due to dependence on structures (e.g., dikes) and need for maintenance;
- dominated by invasive species;
- degraded by stormwater input;
- mitigation sites not fully functional for some period of years (e.g., marsh systems take 2 years; shrub systems 8 years and forested wetlands 20 years or more);
- debiting bank credits for out-of-kind compensation and/or in other counties/watersheds;
- lacked long-term legal protection (e.g., covenants).





- ➤ Due to the need to respond to NAS study and other critiques COE issued <u>regulatory mitigation guidance</u> (2002)(RGL 02-2):
- "...advance an ecologically meaningful program that mitigates the losses of wetland functions and values, emphasizes accountability and monitoring and integrates mitigation into a watershed context..."

Corps districts will provide a <u>rationale</u> for acreage replacement.

http://www.usace.army.mil/inet/functions/cw/hot\_topics/RGL\_02-2.pdf



### **Corps of Engineers – Nationwide**

is leading the development of a Mitigation Action Plan (ongoing). The MAP is an interagency effort lead by the Corps and EPA.

http://www.mitigationactionplan.gov

#### **St Paul District**

➤ Wisconsin – Guidelines for compensatory mitigation in place since 2002 – Public Notice.

http://www.dnr.state.wi.us/org/es/science/publications/wetland\_mitig.pdf

➤ Minnesota – Draft Guidelines – St Paul District Compensatory

Mitigation Policy for Minnesota - dated April 2005 (including companion

Ecological Rationale).



## Components of Compensatory Mitigation

- **Baseline** information
- > mitigation goals and objectives
- > factors considered in site selection
- written specifications
- performance standards
- > parties responsible for compliance
- > legal means for protecting mitigation
- contingency plans
- > monitoring and long-term reporting plans,
- > financial assurances





### In the Works

- ➤ The Corps is considering a National Mitigation Policy COE and EPA effort.
  - Moving away from acreage surrogates to functional replacement.
- > District encourages use of functional assessments.
  - >WisRAM vs. MnRAM

http://www.bwsr.state.mn.us/wetlands/mnram/





### In the Works

- ➤ Proposed GP-002-WI
  - A new general permit for Wisconsin designed to replace the GPs in GP/LOP-98-WI.
  - ➤ One GP with a non-reporting section and a reporting section.
  - Currently undergoing internal Corps review.
  - LOP procedures will be issued separately, with little change anticipated.





### In the Works

- The District is considering an in-lieu fee mitigation proposal for use in WI.
  - Limited to GP or LOP authorizations.
  - For local road projects only
  - ➤ Not for projects eligible to use WDOT banks.
- ➤ Regionalization of the 1987 Manual is underway:
  - ► MN and WI in supplements slated for 2009
  - Arid West Regional Supplement is out for review

http://www.usace.army.mil/inet/functions/cw/cecwo/reg/reg\_supp.htm





## Recent Developments

➤ Technical Standard for Water-Table Monitoring of Potential Wetland Sites:

http://www.nap.usace.army.mil/cenapop/regulatory/water monitor technote.pdf

Updates in Version 5.9 Field Indicators of Hydric Soils in the United States

http://www.epa.gov/reg3esd1/hydricsoils/pdf/Update %205.9%20of%20%20Hydric%20soil%20indicators%20in %20Mid-Atlantic%20US.pdf